INLAND EMPIRE PAPER COMPANY

3320 N. ARGONNE
SPOKANE, WASHINGTON 99212-2099

PHONE 509/924-1911
FAX 509/927-8461

March 23, 2015

Via E-mail (swqs@ecy.wa.gov)

Ms. Cheryl Niemi
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Comments on Draft Human Health Criteria

Dear Ms. Niemi:

Inland Empire Paper Company (IEP) appreciates the opportunity to provide these comments on the proposed human health toxics criteria and implementation tools as amendments to the state Water Quality Standards.

IEP is one of the few remaining pulp and paper mills in the state of Washington that uses recycled paper products. IEP does not produce polychlorinated biphenyls (PCBs) in its manufacturing process but does have to address the presence of PCBs in the inks and dyes contained in the recycled paper stock used at its mill. This is problematic where EPA regulations allow for inadvertent PCB concentrations in inks and dyes and where the Spokane River at our mill is potentially subject to very stringent downstream PCB criteria approved for the Spokane Tribe of Indians. These comments are offered from the perspective of operating our facility under these conflicting regulatory schemes and from the perspective of our participation on the Spokane River Regional Toxics Task Force (SRRTTF).

Comment No. 1 – Ecology should not apply the Governor's Policy Directive to the PCB criteria.

It is not reasonable to over-regulate PCBs in state water quality standards where PCBs are ubiquitous and persistent in our environment. Ecology has used a reasonable level of risk at 4×10^{-5} for calculating the PCB criteria. This risk level is the same as that used by the state Department of Health for PCB fish advisories. The criteria based on this risk level should not be further reduced by the arbitrary decision to set criteria no less stringent than the National Toxic Rule.

EPA has approved water quality standards for states using risk level policies different from its 2000 methodology for human health criteria. In 2013, for example, EPA approved

criteria submitted by the state of New Jersey that were based on risk levels from the Safe Drinking Water Act. EPA deemed the New Jersey criteria to be scientifically derived and therefore no less stringent than the NTR even if the actual values were not as stringent as the corresponding NTR values.

Comment No. 2 – Ecology should not adopt PCB criteria based on a high consumption rate and a one in one million risk level.

Ecology should not revise the risk policy adopted for PCBs in the draft rule for a one in one million risk policy.

IEP has little control over PCBs coming into its manufacturing process when it is using recycled paper products. EPA regulations allow for the inadvertent presence of PCBs in inks and dyes at 50 ppm under the Toxics Substance Control Act (TSCA). This allowance is over 38 billion times higher than the Spokane Tribe of Indians approved PCB criteria of 1.30 pg/L.

IEP has tried unsuccessfully to have EPA revise its rules on inadvertent PCB concentrations. These efforts have included working cooperatively with Tribal leaders, the Director of the Department of Ecology, environmental groups and other associations to petition EPA to revise the TSCA. We have reached out to legislators and sought to have a seat at the table in the EPA process to review the TSCA regulations. EPA has refused and continues to refuse to open a discussion on revising this section of the TSCA rules. A summary of our efforts is set forth in the documents attached to this letter.

The SRRTTF recently received a letter dated February 24, 2015, from Dennis McLerran, EPA Region 10 Regional Administrator, justifying both the lack of effort by EPA to enforce TSCA and its continued unwillingness to review and revise this section of the TSCA. This issue has national significance that is only now beginning to manifest itself through the work being performed in the Spokane River watershed to address PCB's. EPA's apparent intention to simply ignore this extreme regulatory paradox in this watershed will not go away, but will unfortunately cause extreme duress for the community attempting to comply with impossible standards. It is becoming very evident through the work of the SRRTTF that the Spokane River will never achieve the Spokane Tribal PCB criteria as long as this TSCA allowance exists.

Ecology should note the representation in Mr. McLerran's letter that TSCA enforcement is "not a promising approach" because of the "resources necessary to implement" TSCA. Mr. McLerran also rejects revising TSCA to have more stringent PCB limits due to "policy and scientific challenges." The scientific challenges include the uncertainty of PCB congener toxicity. Mr. McLerran claims:

> The aggregation of PCB congeners may in some instances be problematic for risk assessment because the toxicity of different PCB congeners varies and a fixed water quality concentration for total PCBs may not adequately represent the variable toxicity of various congeners actually present in a particular water body.

A copy of Mr. McLerran's letter is attached to this comment letter.

The policy and scientific challenges described in the 2015 EPA letter are undoubtedly the reason EPA excluded PCBs from its proposed 2014 update to human health toxics criteria. Mr. McLerran fails to acknowledge the extreme resources and scientific challenges that Washington communities and businesses will invest in a perpetual effort to meet unattainable water quality standards approved by EPA. In light of these challenges it is more than appropriate to use a less conservative but fully protective risk level for deriving PCB criteria. It would not be appropriate to adopt more stringent criteria until EPA has addressed the inadvertent production of PCBs.

Comment No. 3 – Over-regulation of PCBs could result in the end of recycling.

Our society places a high value on sustainable practices including recycling. IEP is now one of only a few remaining pulp and paper mills in Washington that use recycled paper. It is very unlikely that IEP could continue the use of recycled material if faced with PCB limits as strict as the Oregon criteria let alone the Spokane Tribal criteria at the point of its discharge. There are currently no feasible means for IEP to achieve such low levels of PCB concentrations. Ecology should consider the potential adverse impact on pulp and paper mills using recycled materials in setting the PCB human health criteria. It is also important to note that should IEP discontinue its use of recycled paper that the PCB problem has not gone away, it simply will shift to some other pathway of getting into the environment (export to China, possible groundwater contamination through landfill, ambient dispersion through incineration, etc.).

IEP requests that Ecology consider implementation tools to support recycling including a specific prohibition on numeric effluent limitations for PCBs in state waste discharge permits for facilities that have PCB management issues that result from PCB concentrations allowed in EPA regulations. Ecology established relief for numeric limits for industrial stormwater permit coverage in RCW 90.48.555 on the rationale that industrial facilities are not generally responsible for bacteria loading. The same is true for PCBs in the pulp and paper recycling industry.

Comment No. 4 – Over-regulation of PCBs could adversely impact fish hatcheries in Washington.

Ecology has documented PCB loading from hatcheries associated with materials used in hatchery construction, in fish feed, the discharge water, and subsequently in the hatchery fish tissue. It is likely that fish hatcheries including the Spokane Tribal hatcheries would have significant compliance challenges if all dischargers to the Spokane River are obligated to strictly comply with PCB criteria at the levels of the Oregon or Spokane Tribal PCB criteria.

The documentation of PCB loading associated with hatcheries includes:

Ecology Pub. No. 06-03-017 (April, 2006)(WDOE 2006) – Analyzed skin-on fillets of pre-release rainbow trout from 11 hatcheries and found PCBs ranging from <2.3 to 67 ng/g (wet weight) with an average of 13.0 ng/g (wet weight) PCBs. Assuming that fillet concentrations reflect whole-body concentrations, these concentrations corresponded to <103 to 9700 ng total PCBs per fish (using hatchery-specific average fish weights, which ranged from 83 to 678g).

Johnson, L.L, Ylitalo, G.M., Arkoosh, M.R., Kagley, A.N., Stafford, C., Bolton, J.L., Buzitis, J., Anulacion, B.F., Collier, T.K. 2007. Contaminant exposure in outmigrant juvenile salmon from Pacific Northwest estuaries of the United States. Environ. Monit. Assess. 124:167-194 – Found between 39 and 59 ng/g (wet weight) total PCB in whole-body juvenile Chinook from six west coast hatcheries (all hatcheries on coastal streams). The paper notes that "...contaminated salmon may be a significant source of toxicants in the environment and in the food chain…"

Kelly, B.C., Fernandez, M.P., Ikonomou, M.G., Knapp, W. 2008. Persistent organic pollutants in aquafeed and Pacific salmon smolts from hatcheries in British Columbia, Canada. Aquaculture. 285:224-233 – On average, found 25.5 and 48.5 ng/g (wet weight) PCBs in Chinook smolts from two hatcheries in British Columbia and 34.9 ng/g (wet weight) in coho smolts from a third (BC) hatchery.

Johnson, L.L., Willis, M.L., Olson, O.P., Pearce, R.W., Sloan, C.A., Ylitalo, G.M. 2010. Contaminant concentrations in juvenile fall Chinook salmon from Columbia River hatcheries. N. Americ. J. Aquaculture. 72:73-92 – Analyzed pre-release juvenile Chinook from 8 hatcheries feeding the Columbia River and found whole body concentrations of PCBs ranging from 6.9 to 61 ng/g (wet weight), corresponding to 22 to 323 ng per fish (individual hatchery-specific average weights from 3.2 to 6.2 g).

Meador, J.P., Ylitalo, G.M., Sommers, F.C., Biyd, D.T. 2010. Bioaccumulation of polychlorinated biphenyls in juvenile Chinook salmon (Oncorhynchus tshawytscha) outmigrating through a contaminated urban estuary: dynamics and application. Ecotoxicology 19:141-152 –Analyzed pre-release juvenile Chinook salmon from the Soos Creek hatchery (Puget Sound) and, over a three year period, found total PCB concentrations ranging from 10 to 50 ng/g (wet weight), corresponding to 90 to 125 ng PCB per fish (fish weight ranged from 2.5-9.4 g).

NOAA Fisheries (2014), Draft Environmental Impact Statement on Two Joint Tribal Resource Management Plans for Puget Sound Salmon and Steelhead Hatchery Programs, Appendix K. – discusses PCB concentrations in hatchery fish feed as well as contaminants in hatchery-origin fish.

The SRRTTF has confirmed with the Spokane Tribe of Indians that PCBs are a known issue in the feed they use at their hatchery. The use of fish feed with concentrations of PCBs up to 0.2 ppm allowed by FDA regulations could prove to be a significant source of PCB loading to the Spokane River. Based on its 2009 annual hatchery report, the Spokane Tribal Hatchery rears on the order of 3,000,000 kokanee fry, 500,000 kokanee yearlings, and 800,000 rainbow trout yearlings for release on a yearly basis (Spokane Tribe, 2009). Assuming that kokanee yearlings have the same PCB concentration as rainbow trout yearlings and that kokanee smolt have the same concentration as Chinook smolt gives an estimate of 7.5 g/yr PCB released to the Spokane River with fish from the Spokane Tribe fish hatchery. This loading is equivalent to about 1.5%

of the overall loading (538 g/yr) identified by Ecology (Washington State Department of Ecology (WDOE). 2011. Spokane River PCB source assessment 2003-2007. WDOE Pub. No. 11-03-013, April, 2011), and about half of the loading attributed to the IEP's permitted industrial discharge.

The impact of just one hatchery program on the Spokane River highlights the enormous potential costs that will have to be addressed if Ecology considers more stringent PCB criteria.

Comment No. 5 – The principles of environmental justice do not require Washington to adopt the Oregon human health criteria for PCBs.

The principles of environmental justice do not support adoption of the Oregon or even more stringent PCB criteria in light of the lack of resources at the national and state level to manage or enforce such standards. Environmental justice is not served by a political demand for more stringent criteria where there is an acceptable and defensible basis for the risk level applied by Ecology to derive the PCB criteria. This is particularly true where EPA has identified and so far unresolved whether a single total PCB criteria is even appropriate. Ecology should also consider whether the ends of environmental justice are served by criteria that may result in the end of pulp and paper mills that use recycled materials and the closure of hatchery programs.

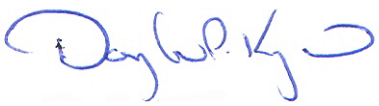
There should only be one standard for environmental justice. EPA has apparently taken the position that neither environmental justice nor its trust responsibilities to Northwest Tribes requires it to enforce TSCA or to reform TSCA. The same principles of environmental justice cannot reasonably require the state of Washington to adopt criteria that are beyond the detection limits of approved test methods and available treatment. It is not reasonable to hold the state Water Quality Standards hostage to ongoing sources of PCBs at levels allowed by EPA regulations.

Comment No. 6 – Ecology should confirm that WAC 173-201A-260(3)(h) does not allow for the use of unapproved test methods for permit compliance.

EPA regulations preclude the use of non-approved test methods for NPDES permit compliance. 40 C.F.R. § 136. The same regulations only allow EPA to approve alternative test methods. In response to these comments IEP requests that Ecology confirm that WAC 173-201A-260(3)(h) does not allow for the use of an unapproved test method for compliance in a state water quality permits.

I appreciate your time in considering these comments and invite Ecology staff to contact me for further information and clarification.

Sincerely,



Douglas P. Krapas
Environmental Manager

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